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## **EMERGENCY MEDICAL SERVICES DEPARTMENT**

July 17, 2008

Dr. Steven Tharratt, Director  
California EMS Authority  
1930 9th Street  
Sacramento, CA 95814

**RE: Pre-public Comments on Draft 2<sup>nd</sup> Edition of EMSA #141 and Draft California Emergency Ambulance Zones**

Dear Dr. Tharratt:

The opportunity to provide pre-public comments on the draft 2<sup>nd</sup> Edition of EMSA #141 is very much appreciated. Extending the comment period to July 21, 2008 is also very much appreciated, and this additional time facilitated a much more thorough review of the document. Second, the compilation of all this material into one document is a fine piece of work. Your staff has done a magnificent job at pulling all of this together. Placing the guidelines EMSA uses to evaluate EMS Plans into an official document is of great benefit to each LEMSA and the public. This effort answers many questions and helps to demystify the process.

Unfortunately, we are not in total agreement with some of the document's contents and interpretations of statute. State law gives counties authority to create, plan, and implement local EMS systems. There is no provision in State law that creates one statewide system with central authority. Yet, it seems that the underlying theme throughout this draft document is to undo the intent of the legislature and create a statewide system under EMSA's control. Clearly, there is no authority or legislative intent for such an action. Attempts to usurp counties' legislative-given authority with implementation of a guidance document are inappropriate.

The following comments, suggestions, and requests are offered.

### **I. Introduction, D. EMS Transportation System Design**

This section suggests that a LEMSA should "integrate non-emergency transport providers (gurney, wheelchair vans, or other forms of medical transport) operating in its jurisdiction." Although this is a worthy concept, there does not appear to be any specific enabling legislation that provides a LEMSA the authority to regulate/integrate non-ambulance transports into the EMS system. If such authority exists, beyond local government's generic police powers, please reference the statutory citation. Otherwise, this statement should be removed because it is an unrealistic expectation.

### **II. Definitions, Periodic Interval**

The definition inappropriately establishes a maximum number of years between competitive processes. The legislature's intent in establishing H&S 1797.224 clearly provides counties with the latitude to create an EMS system that best serves its communities. The arbitrary imposition of a 10-year time limit was not

imposed by the legislature and not written into the language in the statute. Arbitrarily establishing a 10-year time limit exceeds the authority EMSA was granted in the statute, to the detriment of the county's authority. If the legislature wanted a specific number of years in the statute, it would have been written into the law. The absence of a specific time frame leaves the latitude up to the counties, and EMSA must not infringe on the latitude given to counties.

## II. Definitions, Manner and Scope

The effort to define manner and scope is laudable. However, the proposed definition again interferes with the latitude granted to counties by the legislature. The proposed definition, along with other provisions later in the document serve to restrict a county's ability to select ambulance providers using the grandfather provision. Clearly, the legislature allowed this to be a county decision. Please delete the proposed definition of manner and scope from the draft document.

## III. Transportation Plan Processing, B. EMS Transportation Plan Review and Approval 2<sup>nd</sup> paragraph, 4<sup>th</sup> sentence

The document states, "Failure to submit annual updates pursuant to Health and Safety Code 1797.254 may jeopardize the State action immunity." EMSA has no authority to withdraw such protection, based on .254. EMSA can disapprove an EMS Plan, or EMSA can decide a LEMSA is non-compliant with .254 for untimely EMS Plan submission. However, State action immunity cannot be withdrawn by EMSA. It either exists based on the last approved plan, or it does not. Holding the threat of revoking State action immunity over a LEMSA to ensure timely submittal of EMS Plans is inappropriate, and establishes an environment of ill will between the State and counties.

A LEMSA spends time ensuring the local EMS system is functioning well and constantly trying to improve the system. Updating EMS Plans is a great deal of work and involves a significant amount of staff time, thereby taking away valuable time from actual system improvements. Updating an EMS Plan does not in itself improve EMS services to a community. Yet, according to this draft document it is an important enough activity to cause revocation of State action immunity. Threatening a LEMSA with revocation seems to be more of a control issue for EMSA than an effort to ensure actual high quality services to the public. EMSA's priorities in this regard seem misplaced. Please delete this threat from the draft document.

## III. Transportation Plan Processing, C. Transportation Plan Updates 1<sup>st</sup> paragraph, 1<sup>st</sup> sentence

The document states, "Any changes to the transportation plan shall be submitted to the EMS Authority for review and approval 60 days prior to the proposed plan implementation." It does not seem that any provision of any statute requires a LEMSA gain EMSA's approval prior to implementation of a proposed plan. The only provision in statute requires that changes be submitted annually to EMSA. Creating/imposing a requirement that all EMS Plan actions be submitted to the State for approval prior to implementation creates two very big problems: 1) It is an infringement on the authority the legislature granted to counties, and 2) It makes each improvement to a local EMS system subject to a burdensome, time-consuming State bureaucratic process, thereby creating a detriment to local public health and safety.

III. Transportation Plan Processing, C. Transportation Plan Updates

Sub-bullet points beneath the 3<sup>rd</sup> main bullet point

Please delete this subjective set of criteria for determining manner and scope. The criteria used in defining manner and scope falls under the authority of each county; not the State. The set of subjective criteria listed in the draft document interferes with the latitude granted to counties by the legislature. The proposed criterion restricts a county's ability to select ambulance providers using the grandfather provision. Clearly, the legislature allowed this to be a county decision, within the confines of .224.

III. Transportation Plan Processing, D. Changes of EMS Operating Area or Sub-area

6<sup>th</sup> paragraph

Again, creating/imposing a requirement that all EMS Plan actions be submitted to the State for approval prior to implementation creates two very big problems: 1) It is an infringement on the authority the legislature granted to counties, and 2) It makes each improvement to a local EMS system subject to a burdensome, time-consuming State bureaucratic process, thereby creating a detriment to local public health and safety.

III. Transportation Plan Processing, D. Changes of EMS Operating Area or Sub-area

7<sup>th</sup> paragraph, 2<sup>nd</sup> sentence

The document states, "Until a LEMSA's transportation plan has been reviewed and approved by EMS Authority, all operating areas are non-exclusive and a LEMSA may not receive protection under state action immunity for anti-trust activities." EMSA is not granted the authority in statute to determine if an operating area is exclusive or non-exclusive. This is a decision made at the county level. EMSA's authority is limited to approving (or disapproving) an EMS Plan. EMSA's disapproval of an EMS Plan does not imply that all operating areas are therefore non-exclusive. The decision to make an operating area exclusive or non-exclusive rests solely with counties. If a county chooses to create exclusive operating areas in spite of EMSA's disapproval of an EMS Plan, the consequence is that the county may need to defend itself against a claim of anti-trust without the State's support; the action does not "automatically" make an operating area non-exclusive. Please delete the referenced sentence.

IV. Operating Areas

1<sup>st</sup> paragraph, 2<sup>nd</sup> sentence

The document states, "The areas shall be established based on optimal service provisions and patient care, not geopolitical boundaries or traditional service areas." How might this be determined? Please specify the criteria or expectation a LEMSA is being asked to use in creating operational areas based on optimal service provisions and patient care.

IV. Operating Areas, A. Non-Exclusive Operating Areas

1<sup>st</sup> paragraph, 2<sup>nd</sup> sentence

The document states, "LEMSA . . . should ensure that the calls in non-exclusive areas are distributed equitably . . .". There is no requirement in statute or regulation that mandates equitable distribution of calls. Please delete this language.

IV. Operating Areas, B. Exclusive Operating Areas, 1. Criteria for Establishing Exclusive Operating Area, 3<sup>rd</sup> bullet point

The document states, “. . . and received approval of the revisions from the EMS Authority prior to implementation.” Again, creating/imposing a requirement that all EMS Plan actions be submitted to the State for approval prior to implementation creates two very big problems: 1) It is an infringement on the authority the legislature granted to counties, and 2) It makes each improvement to a local EMS system subject to a burdensome, time-consuming State bureaucratic process, thereby creating a detriment to local public health and safety.

IV. Operating Areas, B. Exclusivity via the “Grandfathering” Process  
Sections a) and b)

Please delete this subjective set of criteria for determining manner and scope. The criteria used in defining manner and scope falls under the authority of each county; not the State. The set of subjective criteria listed in the draft document interferes with the latitude granted to counties by the legislature. The proposed criterion restricts a county’s ability to select ambulance providers using the grandfather provision. Clearly, the legislature allowed this to be a county decision, within the confines of .224.

IV. Operating Areas, D. Exclusivity via the Competitive Process  
1<sup>st</sup> paragraph, 1<sup>st</sup> sentence

The document states, “Establishing an EOA by a competitive process is the preferred method of creating an exclusive operating area.” This is an inappropriate editorial comment, and it should be deleted. Section .224 does not state a preference over grandfathering or competition. Both are allowed, as specified. For EMSA to take a position that the competitive process is preferred is in conflict with the statute, infringes upon a county’s authority, and sends a message to the public that clearly was not intended by the legislature. Both methods are valid under the law, and EMSA needs to adopt a philosophical position that supports the entire law, not selected provisions.

IV. Operating Areas, D. Exclusivity via the Competitive Process  
Page 17, 4<sup>th</sup> bullet point, 3<sup>rd</sup> sentence

The document states, “A competitive process shall be conducted at least every 10 years.” Delete this sentence. The legislature’s intent in establishing H&S 1797.224 clearly provides counties with the latitude to create an EMS system that best serves its communities. The arbitrary imposition of a 10-year time limit was not imposed by the legislature and not written into the language in the statute. Arbitrarily establishing a 10-year time limit exceeds the authority EMSA was granted in the statute, to the detriment of the county’s authority. If the legislature wanted a specific number of years in the statute, it would have been written into the law. The absence of a specific time frame leaves the latitude up to the counties, and EMSA must not infringe on the latitude given to counties.

IV. Operating Areas, D. Exclusivity via the Competitive Process  
Page 18, 1<sup>st</sup> bullet point

Please delete this entire bullet point. See comments above.

IV. Operating Areas, D. Exclusivity via the Competitive Process

Page 18, 2<sup>nd</sup> bullet point

Please delete this entire bullet point. The document states, “The awarded provider fails to abide by the terms and conditions of the contract.” Administration of a service provider contract is the responsibility and duty of a LEMSA. Contract compliance far exceeds EMSA’s authority. EMSA is not granted the authority in statute to determine if an operating area is exclusive or non-exclusive. This is a decision made at the county level. EMSA’s authority in this context is limited to approving an EMS Plan. EMSA’s disapproval of an EMS Plan does not imply that all operating areas are therefore non-exclusive. The decision to make an operating area exclusive or non-exclusive rests solely with counties.

The following comments are offered in regards to the draft California Emergency Ambulance Zones matrix.

- The document reflects that Kern County’s last approved EMS Plan was the 2003 version. Please note that in your letter dated April 22, 2008, EMSA found Kern County’s EMS Plan 2006 to be in compliance with the EMS System Standards and Guidelines and the EMS System Planning Guidelines, with the exception of Kern County’s Transportation Plan. Please reflect on the matrix that Kern County’s last approved EMS Plan is 2006, with pending issues in regard to the transportation component. Showing the last approved plan as the 2003 version is inaccurate.
- Please show on the matrix regarding Exclusivity Status that Kern County’s operational areas 1 through 11, and air operational areas A and B, are all exclusive operational areas. The matrix reflects these as non-exclusive, which is inaccurate. We acknowledge that there are pending questions regarding the transportation component of our EMS Plan. However, the operational areas are in fact exclusive, as determined through implementation of a Kern County ordinance and execution of several contracts in 2006 and 2008. These operational areas are legally exclusive, regardless of EMSA’s recognition. To reflect the areas as non-exclusive is not factually correct. In the very least, these operational areas should be shown on the matrix as exclusive, with perhaps an asterisk or notation that EMSA’s review of the transportation component is pending.

As mentioned previously, EMSA is not granted the authority in statute to determine if an operating area is exclusive or non-exclusive. This is a decision made at the county level. EMSA’s authority in this context is limited to approving an EMS Plan. EMSA’s disapproval of an EMS Plan does not imply that all operating areas are therefore non-exclusive. The decision to make an operating area exclusive or non-exclusive rests solely with counties. If a county chooses to create exclusive operating areas in spite of EMSA’s disapproval of an EMS Plan, the consequence is that the county may need to defend itself against a claim of anti-trust without the State’s support. EMSA’s disapproval of an EMS Plan does not negate the county’s decision to create an exclusive operating area; there is no provision in law to “automatically” make an operating area non-exclusive as a result of EMS Plan disapproval.

- Please show on the matrix that the Level of Exclusivity for operational areas 1 through 11 is All Ambulance Transport.

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- Please show on the matrix that the Level of Exclusivity for operational areas A and B is All Helicopter Ambulance Transport. Fixed-wing (airplane) air ambulances are not included in the level of exclusivity.
- Please show on the matrix that the Method of Exclusivity for operational areas 1 through 9 is Grandfathered.
- Please show on the matrix that the Method of Exclusivity for operational areas 11, and A and B, is Competitive Process.
- Please show on the matrix that the Date of Last Competitive Process for operational area 11 is May 19, 1994.
- Please show on the matrix that the Date of Last Competitive Process for operational areas A and B is February 26, 2008.
- Please show on the matrix that the Current Provider for operational area B is Mercy Air Service. The contract with California City Fire Department was terminated July 11, 2006, for cause (failure to provide an air ambulance). As of February 26, 2008, Mercy Air Service became the exclusive operator for area B.

We appreciate the opportunity to provide pre-public feedback, and appreciate your consideration of making the requested changes. It is hoped that this document will be re-worked in a manner that supports the work LEMSAs are doing and protects counties' authority granted by law. For good or bad, California has a decentralized EMS system, and the law places a great deal of authority and responsibility at the county level. Guidance documents from EMSA should be consistent with this approach, and consistent with the language in the law. Overturning the intent of the law through adoption of a guidance document is unproductive and creates discontent. We look forward to reviewing the next version of these important documents.

Sincerely,



ROSS ELLIOTT  
Director

cc: Bonnie Sinz, RN, Chief, EMS Systems Division  
Donna Nicolaus, EMS Systems Manager